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Sectt. II-27—100,000—21-5-53.

Home (1947) Department.

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7/S SERIES

Letter

G.O. No. 3799

Dated 9 (c 47.

[Despatch Abstract.]

Act - Merchant Seamen (Litigation) Act, 1946 - Framing of rules Under the Act - - Letter from the Government of India - Replied.to.

No.18-M.II(8)/43.
Government of India.
Department of Commerce.

New Delhi, the 8th March 1947.

From

M.A.Ghani, Esquire, B.A. (Hons.)
Assistant Secretary to the Government of India.

To

The Chief Secretary to the Government of
the Punjab, Bombay, the U.P., Bihar,
Begal, Madras, the C.P. & Berar, Sind
and North West Frontier Province.

Subject:- Framing of Merchant Seamen
(Litigation) Rules.

Sir,

I am directed to enclose a draft of the Merchant Seamen (Litigation) Rules proposed to be framed by the Central Government under section 10 of the Merchant Seamen (Litigation) Act, 1946 (XXI of 1946).

2. The Government of India would be obliged if the views of the Provincial Government together with the views of the * local high court/@ Chief Court /% Judicial Commission on the draft Rules are furnished to them at an early date.

* Not to Sind & N.W.F.P.
@ Sind.
% N.W.F.P.

3. Draft rule 4 is referable to section 10(b) of the Act which contemplates that different periods may be prescribed with reference to different classes of suits. It has been suggested that there may be certain classes of suits wherein the postponement may not be in the interests of the serving seamen and a shorter adjournment at the discretion of the court would meet the case. *The High Court/@ Chief Court/% Judicial Commission's attention may be invited to this point also, for favour of its/his views and suggestions in the matter.

/to the extent provided by the rule.

4. Section 10(c) of the Act lays down that the rules to be framed under the Act may provide for the conditions subject to which damages may be awarded under sub-section (1) of section 7 of the Act and the amount of such damages The Government of India would be grateful for the views and suggestions of the *High Court/@ Chief Court/%Judicial Commissi Commissioner as to the proper conditions to be prescribed in th that behalf. In this connection it may be mentioned that the provision relating to award of damages in sub-section (1) of section 7 of the Act was inserted by the Select Committee of the Legislative Assembly to whom the Bill was referred, and in para 4 of their Report, the Committee observed as follows:

> "We consider that a party who deliberately conceals knowledge which he is required under section 3 to disclose should not go unscathed. We, therefore, propose an addition to clause 7(i) to enable the court when setting aside a decree or order under that sub-clause to award damages in such cases. We think however that the exercise of this power should be subject to rules, and accordingly propose an additional sub-clause in clause 10"

5. The Central Government is also required to

Cont.

to sepcify by notification in the Gazette of India areas and circumstances in which proviso to section 8 of the said act will not be applicable. This proviso was also inserted by the Select Committee who observed as follows:-

> "We further consider that proceedings to enforee a right of pre-emption should in the matter of limitation be treated in like manner to that provided in section 11 of the 1925 Act, and we propose amending clause 8 of the Bill accordingly."

The reference by "1925 Act " is to the Indian Soldiers (Litigation) Act, 1925, but the words "except in such areas and in such circumstances as the Central Government may, by notification in the official gazette, specify in thi behalf" appearing in section 8 of the Merchant Seamen (Litigation) Act, 1946 do not appear in section 11 of Indian Soldiers (Litigation) Act, nct were there any similar from of words in that Act originally. However, by section 2 of Ordinance No.XIV of 1944, the words "/ except in such areas, and subject to such modifications if any/as the Central Government may" etc., were inserted. It seems obvious that the Select Committee adapted their amendment of section 8 of the Merchant Seamen (Litigation) Act from this precedent. Shortly before the Merchant Seamen (Litigation) Act was finally passed, however, the Indian Soldiers (Litigation) Act was amended by Act No.X VII of 1946, and the ~~werkds~~ words which have been placed in square brackets above were deleted and replaced by the words "except where the said right accrues in such circumstances and is in respect of agricultural and village immovable property situated in any such area". It appears to the Government of India that the Central Government should exclude from the scope of the proviso to section 8 of the Merchant Seamen (Litigation) Act suits, appeals or applications instituted or made with the object of enforcing a right of pre-emption where such right accrues in respect of agriculture and village immovable property but they consider that such exception should be applicable to cases of the above nature throughout British India and not only in any particular area. The Government of India would be glad to be furnished with the views of the * High Court/@ Chief Court/$ Judicial Commissioner on these points also alongwith the observations of the Provincial Government thereon.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/-
Assistant Secretary to the Government of India.

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NOTIFICATION.

Merchant Shipping.

In exercise of the powers conferred by section 10 of the Merchant Seamen (Litigation) Act, 1946 (XXI of 1946), the Central Government, after consulting the High Courts concerned, is pleased to make the following rules namely:-

P.T.O.

1(1) These rules may be called the Merchant Seamen (Litigation) Rules, 1947.

(2) All words used herein and defined in the Act shall be deemed to have the meaning respectively attributed to them by the Act.

2.(1) The certificate given by a Collector under Section 4 of the Act shall be in Form A of the Schedule.

(2) Any person may, on behalf of any serving seaman who is a party to any proceedings pending before any court apply by swearing an affidavit or otherwise, to the Collector of the District in which the seaman ordinarily resides or has property, asking for the grant of a certificate under section 4 of the Act. The Collector may thereupon make such enquiries as he deems fit and may, if satisfied, grant the requisite certificate.

3. The notice given by the Court under section 5 of the Act shall be in Form B of the Schedule and the certificate of the Shipping Master under section 6 of the Act, shall be in Form C of the Schedule.

4. The period for which proceeding shall be postponed under sub-section (1) of section 6 shall be the period ending with the date specified by the Shipping Master in his certificate to be the date after which the seaman is likely to cease to be a serving seaman. Provided that the Court shall not resume the proceedings after the said date unless it is satisfied by a certificate of the Shipping Master or otherwise, that the seaman has ceased to be a serving seaman.

5. The court may, on its own motion or on the application of a person who is a party to the proceedings postponed under sub-section (1) of section 6, call for a fresh report from the shipping Master as to whether the seaman has ceased to be a a serving seaman; and if it is satisfied by such report or otherwise, that the seaman has ceased to be a serving seaman, it may resume the proceedings not withstanding that the period specified in rule 4 has not expired.

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SHEDULE

FORM .A.
(Vide Rule 2)

From

The Collector,
District _____

_____

To

_____

_____

_____

No. dated.

Sir,

I hereby certify that I have reason to believe that

_____ son of _____ of village

who is a seaman ordinarily residing in my district
having property
and who is a party in *_____

_____ now pending before

%_____

is unable to appear therein
is a serving seaman.

I have the honour to be,
Sir,
Your most obedient servant,

Collector.

Note: (1) This Certificate should be sent by registed post or by hand, an acknowledgement being taken.

(2) It should be addressed, in the case of the Federal Court or the High Court to the Registrar, and in the case of the Financial Commissioner, to the Clerk of the Court, and in other cases to the presiding officer of the court.

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* Here enter suit, appeal, application or other proceeding.

% Here enter name of Court.

FORM.B.
(Vide Rule 3)

In the Court of -_____

Suit No.*_____ of 19_____

To

The Shipping Master,

_____

_____

_____

No. dated

Sir,

WHEREAS the Collector of the District has certified
this Court has reason to believe.

that seaman _____ son of _____

village _____ who is a party to the above proceedings

pending before this Court is a serving seaman
Unable to appear therein

OR

WHEREAS it appears to this Court that _____

son of village being a seaman, though not a party to the proceedings abovementioned, is materially concerned in the outcome of the proceedings and that his interests are likely to be prejudiced by his inability to attend:

Notice is, therefore, hereby given to you under Section 5 of the Merchant Seamen (Litigation) Act, 1946 (XXI of 1946), that the above mentioned proceedings have been suspended, and that if within two months of the receipt of this notice by you, you fail to certify that the seaman is a serving seaman, this Court will, if it thinks fit, continue the proceedings.

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* Here enter title of suit or proceedings.

I have the honour to be,
Sir,
Your most obedient servant,

Judge
Subordinate Judge
Registrar.

F O R M .C
(Vide Rule 3)

No._____ dated, the_____

From

The shipping Master,

_____

_____

To

_____

_____

_____

Subject:- Seaman _____ son of _____

connected with a Suit No. _____

of _____

Sir,

I have the honour to acknowledge receipt of your Notice No._____ dated _____ under Section 5 of the Merchant Seamen (Litigation) Act, 1946 (XXI of 1946), and I do hereby certify that Seaman _____ son of _____ village is for the time being a serving seaman but is likely to cease to be a serving seaman after _____

(insert date here)_____
is not for the time being a serving seaman.

I have the honour to be,
Sir,
Your most obedient servant

Shipping Master.

Note:- This Certificate should be sent by registered post or by hand, an acknowledgement being taken.

(2) It should be addressed, in the case of the Federal Court or the High Court, to the Registrar, and in the case of the Financial Commissioner, to the Clerk of the Court, and in other cases to the presiding officer of the Court.

R.O.C.No.3957/47-B1.

From

P.T.Raman Nayar Esquire, I.C.S.,
Registrar, High Court, M a d r a s .

To

The Secretary to Government
Home Department.

Dated the 21st day of August 1947.

Sir,

Act- Merchant Seamen (Litigation) Act 1947 framing of rules.

Ref:Letter 21096 E/47-1 Home dated 8-7-1947.

The Honourable the Judges see no objection to the draft rules under the Merchant Seamen (Litigation) Act 1947 forwarded by the Government of India.

2. Their Lordships have no suggestions to offer on the question whether different periods should be prescribed for different classes of suits under Section 10(b) read with Section 6 of the Act.

3. As regards the conditions subject to which damages may be awarded under section 7(1) of the Act and the amounts which may be prescribed under Section 10(c), I am to say that it would be best to leave them to the discretion of the court, after fixing a maximum a-s under Section 35 A(2) of the Civil Procedure Code.

4. Their Lordships see no objection to the proposal to exclude from the scope of the proviso to section 8 of the Act, suits appeals or applications instituted or made with the object of enforcing a right of pre-emption where such rights accrue in respect of agricultural and village immovable property throughout India.

Sd/-
Registrar.

Home Department.
Letter Ms.No.3799 dated 9-10-47.

To

The Secretary to the Government of India,
Ministry of Commerce, New Delhi.(with encl.)

Sir,

Act - Merchant Seamen (Litigation) Act, 1946 - framing of Rules under the Act.

Ref: Mr.Ghanis' letter No.18-M.11(8)/43 dated 8-3-47.

I am directed to forward a copy of the letter from the Registrar, High Court, Madras R.O.C. No.3957/47-B1 dated 21-8-47 on the subject cited and to say that the Government of Madras agree generally with the views of the High Court.

Yours faithfully,

/True copy/

Office Assistant,
Madras Record Office.

NG.